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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of MAHNAZ HARRIS-  
RAFIPOOR and MIKE RAFIPOOR.

MAHNAZ HARRIS-RAFIPOOR,

Appellant,

v.

MIKE RAFIPOOR,

Respondent.

G055402

(Super. Ct. No. 03D006006)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Sherri L.  
Honer. Affirmed.

Law Offices of John A. Bledsoe and John A. Bledsoe for Appellant.

Law Offices of James A. Stearman, James A. Stearman and Thomas E.  
Elenbaas for Respondent.

Mike Rafipoor (Husband) and Mahnaz Harris-Rafipoor (Wife) ended their 17-month marriage in 2003. A stipulated dissolution judgment stated Husband owed Wife \$400,000. In 2009, Wife began trying to collect this debt. After much litigation over the validity of the debt, a trial court in 2013 determined the stipulated judgment was unambiguous and constituted an enforceable money judgment. We affirmed this ruling. (*In re Marriage of Rafipoor* (Aug. 6, 2014, G048924) [nonpub. opn.] (*Rafipoor I*).)

After a trial on the issue of whether the money judgment had been satisfied, the court ruled Husband failed to prove he paid the entire judgment and the court scheduled a judgment debtor's examination. Additionally, the court imposed a \$20,000 sanction against Husband pursuant to Family Code section 271. We affirmed these rulings. (*In re Marriage of Rafipoor* (Jan. 18, 2018, G053243) [nonpub. opn.] (*Rafipoor II*).) Husband still has not paid any of the money owed to Wife.

Recently, the trial court denied Wife's postjudgment motions to join third parties to the family law case. The trial court denied the motions for the following two reasons: (1) the third parties were not necessary to enforcement of the money judgment rendered in the case; and (2) because the joinder motions sought to collect money possessed by the third parties, not Husband, resolution of these claims were not necessary for enforcement of the judgment against Husband.

On appeal, Wife asserts the court was mistaken because it had jurisdiction to enforce the family law judgment filed in 2003, and the Order of Appearance of Judgment Debtor lien (ORAP lien), which she secured in 2012. We conclude the court's jurisdiction to enforce the judgment required Wife to first file/pursue one of the enforcement procedures set forth in the Enforcement of Judgments Law (EJL). (Code Civ. Proc., § 680.010 et seq.)<sup>1</sup> As we will explain in more detail below, an ORAP lien is not a type of enforcement proceeding. It is merely a device utilized by creditors

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

preparing for a judgment debtor examination (JDE) to establish priority over other creditors with regard to assets later identified in the JDE. While a court may forcibly join a third party to resolve a claim, action, or proceeding, there is no mechanism to join a party to an ORAP lien. Moreover, because the ORAP lien had expired, and it did not attach to identified property. Wife was required to take the additional step of initiating proceedings to assert her priority over the third parties she believed wrongfully collected Husband's money. While she had several options available to her to achieve this goal, as outlined in the EJJ, filing a joinder motion was not one of them. Wife's failure to initiate an enforcement proceeding against another party (whether it be Husband or directly against a third party), meant there was nothing pending in the family court to join additional and necessary parties. We conclude the trial court did not abuse its discretion in denying Wife's motions to join third parties when there was no type of action or enforcement proceeding pending. The judgment debtor is Husband, not the third parties. We affirm the orders.

### FACTS

The events leading to Wife's joinder motions are adequately described in *Rafipoor I and Rafipoor II*, and we incorporate by reference those factual summaries here. We need only briefly summarize the procedural history relevant to this appeal and then resume where we left off.

In December 2003, the court entered a dissolution judgment, ordering Husband to pay Wife \$400,000. In May 2009, Wife obtained a writ of execution for \$614,919 and levied on Husband's bank accounts. He filed a claim of exemption and a separate civil action against Wife asserting the debt was paid.

Husband eventually dismissed the civil action, but in April 2010, he filed a Chapter 7 bankruptcy petition seeking to discharge the debt he owed Wife and several other creditors.

On August 29, 2012, Wife obtained relief from the bankruptcy automatic stay. Two days later, on August 31, 2012, Wife applied for an order requiring Husband to appear at a JDE and furnish information to help in enforcement of the money judgment. (§ 708.110, subd. (a).) When Wife served a copy of the court's order on the judgment debtor (Husband), she created a lien (ORAP lien) on his personal property having a duration of one year. (§ 708.110, subd. (d).) In her opening brief, Wife asserts she served a copy of the order on September 5, 2012, however, her supporting record citation is to the application she filed in August and not the proof of service.

We can infer Wife served the order on Husband because the record shows he filed a motion to quash the JDE, arguing there was no enforceable money judgment. In 2014, we affirmed the trial court's determination there was a valid money judgment and its order denying Husband's motion to strike the JDE. (*Rafipoor I, supra*, G048924.)

Next, the parties litigated whether Husband was entitled to any offsets. In 2016, the court approved \$185,000 in offsets and ordered a JDE regarding the remaining \$545,054 of debt. In addition, the court ordered Husband to pay Wife \$175,000 for attorney fees, and \$20,000 in sanctions, due to his misconduct before and during the trial. (*Rafipoor II, supra*, G053243.)

Our record does not support Wife's claim the JDE took place on March 4, 2016. In the appellant's appendix, Wife did not submit any documents confirming the court held the JDE or orders revealing the outcome of those proceedings. Neither party discussed in the briefing what allegedly transpired. The puzzling lack of information makes us question if the JDE actually took place.

On July 11, 2016, the court issued a writ of execution for \$740,054. This sum reflected the addition of attorney fees and sanctions following the 2016 trial.

## *I. Joinder Motions*

Our record does not contain any evidence indicating Wife initiated judgment enforcement proceedings against Husband after obtaining the updated writ of execution (July 2016). In December 2016 and in January 2017, Wife filed four motions to join “to this proceeding” Mojtaba and Tanya Mohsenian (the Mohsenians), Aram Bonni, Nassim Banisaeed, Comerica Bank (Comerica), and Ticor Title Company of California (Ticor). These third parties were creditors who filed adversarial proceedings several years prior in Husband’s Chapter 7 bankruptcy case. These parties will collectively be referred to as the Third Party Claimants, unless it is necessary to refer to them individually.

Wife also moved to join “to this proceeding” the attorneys who represented Husband in the family law matter since 2012, Lemkin, Barnes & Row, Inc. (Lemkin). She maintained any attorney fees paid to Lemkin were subject to the 2012 ORAP lien.

Husband opposed the joinder motions on three grounds. First, he argued the ORAP lien expired after one year, and the time was not tolled by the bankruptcy proceedings. Husband noted Wife never made a motion to extend the duration of the lien. Second, Husband asserted that even if the lien was valid, it would not cover payments his business associate Hansen Kamci made to the Third Party Claimants. Husband explained, in a separately filed declaration, that during the bankruptcy proceedings he transferred a 10 percent interest in three corporations (allegedly owning three restaurants) to Kamci. In exchange, Kamci agreed to make payments to creditors “not on my behalf, but as consideration for acquiring my interests in those three corporations.” Third, Husband maintained the Third Party Claimants should be treated as “bonafide purchaser[s]” who would be protected from Wife’s ORAP lien.

Lemkin separately filed an opposition to the joinder motion. It argued the motion lacked factual support because Wife failed to show Lemkin possessed any property subject to the jurisdiction of the court or that Lemkin was an indispensable or

necessary party. Alternatively, Lemkin asserted the ORAP lien expired and would not apply to attorney fees paid by Husband. Lemkin also filed evidentiary objections to Wife's declaration.

## *II. Third Party Claimants*

Before summarizing the court's ruling on Wife's joinder motions, some background information on the Third Party Claimants is instructive. Each of the Third Party Claimants filed adversarial proceedings in Husband's Chapter 7 bankruptcy case, maintaining the debts Husband owed them were nondischargeable. In 2012 and 2013, the bankruptcy court approved settlement agreements and stipulations submitted by Husband and the Third Party Claimants. The settlement agreements provided Husband would pay a reduced debt, and in exchange, the creditors could avoid trial on whether the debt was dischargeable in the bankruptcy case. Wife maintained her ORAP lien was in effect for over four years, giving her priority over any money Husband was purportedly using to pay the Third Party Claimants.

Wife provided limited information about the other creditors and, consequently, our summary of their claims is incomplete. In 2010, Comerica filed its complaint in the bankruptcy court alleging Husband fraudulently induced the bank to loan him \$500,000. In their settlement agreement, Husband acknowledged he owed Comerica \$1,070,900 and he promised to pay the much reduced settlement amount of \$100,000 (payable in monthly installments beginning February 1, 2012). In February 2012, Husband and Comerica executed a settlement agreement and stipulation for "future entry of judgment" in the event Husband failed to make the agreed upon payments. Wife maintained that on June 6, 2012, the bankruptcy court approved the settlement and stipulation, however, she did not cite to or include a copy of the order in our record. Moreover, she did not submit evidence showing Husband actually made payments to Comerica when the ORAP lien was allegedly in effect.

In 2011, Ticor filed its adversarial proceedings in the bankruptcy court, asserting it sued Husband for \$2,000,000. On June 27, 2013, the bankruptcy judge approved a settlement for \$60,000. Many pages of the settlement agreement and stipulation in our record were illegible. We cannot determine the amount or start date for the agreed upon monthly installments. Wife did not submit evidence showing Husband made payments to Ticor when the ORAP lien was allegedly in effect.

In 2010, the Mohsenians and Bonni jointly filed a complaint in Husband's bankruptcy case. They alleged Husband owed them and Banisaeed \$3,000,000 from a failed real estate business venture. In November 2012, the bankruptcy court approved a settlement and stipulation in which Husband agreed to pay the Mohsenians and Bonni \$675,000, and Banisaeed \$103,000. Wife claimed Husband paid \$540,000 to the Mohsenians and Bonni, and paid \$27,681 to Banisaeed. However, her supporting record references were to arguments raised in her joinder motion and a "payment schedule." There was no evidence proving the scheduled payments were actually made. Wife also failed to provide record citations to support her claim these Third Party Claimants knew about the ORAP lien.

### III. *Court Ruling*

On March 24, 2017, the family law court announced its tentative ruling was to deny the joinder motions. The court stated Wife needed to enforce a money judgment against third parties in a civil court, not the family law court. It also noted that due to bankruptcy proceedings, the ORAP lien and the money judgment became issues for the bankruptcy court. It stated the ORAP lien should have been raised in the bankruptcy court, and moreover, the lien expired no later than August 6, 2014 (when *Rafipoor I, supra*, G048924, became final).

The court asked the parties to prepare additional briefing on the issue of whether the court had the authority to join a third party postjudgment, or if the dispute between Wife and the Third Party Claimants should be filed as a separate civil action.

The court asked Lemkin's counsel to brief the issue of whether it had standing to make an appearance in the action. The parties filed briefs on those issues.

In June 2017, the court's tentative ruling was to deny the motions on the following grounds: "The [T]hird [P]arty [C]laimants are not necessary to the enforcement of the money judgment rendered in this case." It found the case authority cited by Wife to be inapt, and noted the rules regarding joinder gave the court broad discretion. The court continued the matter to give Wife's counsel time to provide additional authority on the issue of whether a family law money judgment could be enforced in a civil court.

In August 2017, the court issued its final ruling and denied the joinder motions. It concluded the Third Party Claimants were not necessary to the enforcement of the money judgment rendered in the family law case. "Moreover, since the dissolution action concluded with the 2003 judgment, and the joinder solely involve[d] an attempt to collect on a money judgment against third parties, there [did] not appear to be jurisdictional priority for this family law court to claim any exclusive or continuing jurisdiction . . . ."

Wife appealed this ruling, and after the parties filed their briefs, we invited the parties to file supplemental briefing to clarify which "proceeding" the joinder motions related to, i.e., did Wife seek to join third parties to the dissolution action or the JDE initiated pursuant to section 708.110. We also asked the parties to discuss the application of section 708.120 [third party JDEs]. The parties filed letter briefs. After oral argument, we permitted the parties to file letter briefs about whether the bankruptcy proceedings and orders had any effect over the state court's jurisdiction. The parties filed supplemental briefs.

## DISCUSSION

We wish to begin by expressing our displeasure at Husband's litigation tactics to avoid paying Wife, and we sympathize with her frustration about spending over a decade trying to collect her judgment. However, this appeal concerns Wife's efforts to entangle *third parties* into her dispute with Husband. Like Wife, these third parties are also seeking to collect money from Husband and must be afforded due process. As we will explain in more detail below, we affirm the family law court's discretionary ruling denying joinder of the Third Party Claimants "to these proceedings" because there is no evidence of a pending enforcement proceeding against Husband to be joined with. We deem Wife's claims against Lemkin waived because she did not serve Lemkin's counsel with a copy of the opening brief. (*Palmer v. Holcomb* (1956) 147 Cal.App.2d 94, 100 [appeal abandoned as to one respondent after no service of briefing].)

### I. *Applicable Law*

#### A. *Enforcement Procedures*

Before addressing the joinder motion, it is helpful to briefly review legal authority concerning JDEs and ORAP liens. The first is a judgment enforcement procedure, the second serves as an effective tool to assist creditors petitioning for JDEs.

In 1982 the Legislature enacted the E JL, appearing in sections 680.101 through 724.260, and providing "a comprehensive scheme governing the enforcement of all civil judgments in California." (*Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540, 546 (*Imperial Bank*).) The E JL "reflects the legislative intent to allow judgment creditors a "speedy and inexpensive means . . . to obtain priority over other creditors . . . ." [Citations.]" (*In re Swintek* (Bankr. 9th Cir. 2015) 543 B.R. 303, 307, bold emphasis omitted.)

A judgment creditor can create a judgment lien on the debtor's real property (§ 697.310, subd. (a)), or levy execution (§ 697.710), creating an execution lien.

In addition, the creditor can obtain a judgment lien on personal property (§ 697.560), establishing priority over other unsecured creditors as to certain property.

The EJP provides a handful of supplemental enforcement proceedings to assist in enforcing a money judgment. “They are intended to ‘leave no stone unturned in the search for assets which might be used to satisfy the judgment.’ [Citation.]” (*Jogani v. Jogani* (2006) 141 Cal.App.4th 158, 172.) They include written interrogatories to the judgment debtor (§§ 2030.010-2030.410), demands for inspection of documents (§§ 2031.010 et seq.), JDEs (§§ 708.110-708.205), and creditor suits (§ 708.210). In this case, we will focus on JDEs because Wife seeks to enforce the ORAP lien created when she served a copy of the JDE order on Husband.

“[Examination proceedings] permit the judgment creditor to examine the judgment debtor, or third persons who have property of or are indebted to the judgment debtor, in order to discover property and apply it toward the satisfaction of the money judgment. [Citations.]” (*Imperial Bank, supra*, 33 Cal.App.4th at pp. 546-547.) “An examination of a judgment debtor or third party is the postjudgment equivalent of a deposition. An examination can be used to identify property in the possession or control of the judgment debtor or a *third person* (e.g., a nondebtor spouse), to learn about property the debtor may obtain in the future, and to require the debtor or third person to turn over property to the levying officer. [Citations.]” (Ahart, Cal. Practice Guide: Enforcing Judgments & Debts (The Rutter Group 2018) ¶ 6:1271, p. 6G-1.) “An in-person examination” is considered more effective than propounding interrogatories or employing an asset search firm to discover assets. (*Id.* ¶ 6.1275, p. 6G-3.)

During a JDE, the creditor may subpoena any witnesses having knowledge that would lead to enforcement of the judgment, i.e., bookkeeper, accountant, or nondebtor spouse. (Ahart, *supra*, at ¶ 6:1282, p. 6G-2.) The creditor can question the subpoenaed witness about information leading to enforcement of the judgment “in the

same manner as a trial witness.” (*Yolanda’s, Inc. v. Kahl & Goveia Commercial Real Estate* (2017) 11 Cal.App.5th 509, 514.)

A JDE appearance order made pursuant to section 708.110, subdivision (a), requires that the judgment debtor appear in court and provide information “to aid in enforcement of the money judgment.” The court must issue the order, unless the debtor was examined during the preceding 120 days. (§ 708.110, subd. (b).) The creditor must serve a copy of the order on the judgment debtor at least 10 days before the date set for the examination. (§ 708.110, subd. (d).) Service of the order creates a one year lien on the debtor’s personal property, regardless of whether or not the property is described in the ex parte application (ORAP lien). (§ 708.110, subd. (d).) Failure to appear at the examination may result in arrest and/or punishment for contempt. (§ 708.170, subd. (a)(1)(A) & (B).)

A different procedure applies if the creditor wishes to examine third parties. Under section 708.120, subdivision (a), the judgment creditor files an ex parte application seeking a court order to compel a third person to appear for an examination “to answer concerning” why they possess or control “property in which the judgment debtor has an interest or is indebted to the judgment debtor in an amount exceeding two hundred fifty dollars (\$250) . . . .” (§ 708.120, subd. (a).) The creditor’s application must convince the court that the third party possesses or controls the specified property or debt. (*Ibid.*)

The third-party JDE process requires additional due process safeguards not needed for a section 708.110 examination. “The difference in the statutes is keyed to the examinee, not the property.” (*In re Burns* (Bankr. 9th Cir. 2003) 291 B.R. 846, 853 (*Burns*)). “The purpose of the third-party ORAP statute is rooted in notions of due process. [Citation.] Section 708.120 provides certain procedural protections for the third party, in that it requires an affidavit giving a description of the property, and service of the ORAP upon the third party in question *in order for a lien to arise that binds the third party*. The third party can then make any claims to the property which it might have,

pursuant to [section] 708.180, or obtain a protective order under [section] 708.200.

[Citations.] Thus, [section] 708.120 is intended to be a ‘tool to confirm the existence of certain assets’ while respecting due process and any rights which the third party might

assert. [Citation.] Once notice is given, the third party is obligated to honor the lien.”

(*Burns, supra*, 291 B.R. at pp. 852-853; see *Evans v. Paye* (1995) 32 Cal.App.4th 265,

278-280 [§ 708.180 intended to give relief to judgment creditor without “trampling on the third person’s due process right to a full adjudication prior to removal of the property in his or her possession”].)

At the third party JDE, if the third party claims to have a valid interest in the property or denies the debt, the judgment creditor can ask the court to resolve these disputes. (§ 708.180, subd. (a).) The court has authority to grant a continuance to permit discovery, collect evidence, or make other preparations to decide the third party claim.

(*Ibid.*) The adverse claim must be made “subject to subdivision (b),” of the rule, which provides “[t]he court may not make the determination . . . if the third person’s claim is

made in good faith and any of the following conditions is satisfied: [¶] (1) The court

would not be a proper court for the trial of an independent civil action (including a

creditor’s suit) for the determination of the interests in the property or the existence of the

debt, and the third person objects . . . . [¶] (2) At the time an order for [a third party JDE]

is served on the third person a civil action (including a creditor’s suit) is pending with

respect to the interests in the property or the existence of the debt. [¶] (3) The court

determines [these issues] should be determined in a creditor's suit.”<sup>2</sup> (§ 708.180, subd. (a).)

### B. *ORAP Liens*

The EJM lists three types of liens that can be created in the context of a JDE. As mentioned in the prior section of this opinion, section 708.110, subdivision (d), provides a lien is created on all of the debtor's nonexempt personal property when the debtor is served with an order to appear for an examination (referred to as an ORAP lien). Under section 708.120, subdivision (c), a lien is also created on the debtor's personal property in the hands of a third party when the third party is served with notice to appear for an examination (referred to as a Third-Party ORAP lien).

When the JDE concludes, the court has authority to fashion various orders and create liens to reach assets identified in the examination, including the assets that may have been transferred to a third party. “At the conclusion of an examination proceeding, the court or referee may order the judgment debtor's interest in property in the judgment debtor's or third person's custody or control, or a debt owed by the third person to the judgment debtor, to be applied to satisfy the money judgment if the property is not exempt from enforcement of a money judgment. [Citations.] “Such an order creates a lien on the property or debt” [citation] and is enforceable by contempt [citations.]’ Under section 708.120, subdivision (a), the court or referee may order the person examined, be it the judgment debtor or a third person, to deliver property or funds to a levying officer or directly to the judgment creditor. [Citations.] . . . Moreover, the

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The EJM provides a judgment creditor can bring an action against a third party alleged to have property of the judgment debtor or to be indebted to the debtor. (§ 708.210.) “However, it is anticipated that this expensive and cumbersome action will be reserved for situations in which the third person has failed to” comply with other enforcement tools, such as when the court refuses to determine disputed ownership of the property within the context of a third party JDE. (8 Witkin, Cal. Procedure (5th ed. 2008) Enforcement of Judgment § 291.)

court or referee may order that execution be issued to collect the sum due. [Citation.] Property that is to be sold under section 708.205, subdivision (a), will be sold by a levying officer, provided a writ of execution is outstanding, or by a court-appointed receiver. [Citation.]” (*Imperial Bank, supra*, 33 Cal.App.4th at p. 547.) The lien, often referred to as a turnover lien, continues regardless of whether the money is transferred, unless the transfer is made to a person listed in section 697.740, i.e., a person who acquires an interest in the property for a reasonably equivalent value without knowledge of the lien, a buyer or lessee in the ordinary course of business, or a holder in due course of a negotiable instrument.

In summary, the ORAP lien created pursuant to section 708.110, subdivision (d), is a tool to safeguard a debtor’s assets before JDE proceedings, giving the creditor priority until the court makes post-JDE orders to enforce the money judgment. Civil Code section 2897 provides that “[o]ther things being equal, different liens upon the same property have priority according to the time of their creation . . . .” Section 708.110 makes clear that service of the order to appear is all that is required to create and establish the priority of the ORAP lien.

One final note about the section 708.110 ORAP lien is that it is unique because it is allowed to be a “secret” or hidden lien because “it is not recorded or published.” (*In re Franchise Pictures LLC* (Bankr. C.D. Cal. 2008) 389 B.R. 131, 141.) “The property does not have to be described in detail. [Citations.]” (*Ibid.*) “Other creditors are able to discover the lien only if they know about the creditor’s judgment and review the court file.” [Citation.] The lien may be lost upon transfer of the property to certain persons such as bona fide purchasers in the ordinary course of business. [Citations.]” (*Id.* at pp. 141-142; *In re Hilde* (9th Cir. 1997) 120 F.3d 950, 956 [public policy issues with ORAP lien being a “secret” something for California Legislature to solve].) In other words, although notice is not necessary to create an ORAP lien, the secret nature of the lien “may at times result in the lien being inferior to the after-acquired

rights of third parties who do not have notice of the lien.” (*Burns, supra*, 291 B.R. at p. 853.)

## II. *Permissive Joinder*

“In civil litigation generally, the question whether a person must be joined as a party to a suit is governed by the compulsory joinder statute, section 389 . . . .

Subdivision (a) of that statute states: ‘A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.’

[Citation.]” (*Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1016-1017 (*Bianka*).)

“To guide implementation of these general joinder principles in the family law context, the Judicial Council has promulgated rule 5.24 of the California Rules of Court. As relevant here, rule 5.24(e)(1), under the heading ‘Mandatory joinder’ (italics omitted) provides that a court must order that a person be joined as a party to a family court proceeding ‘if the court discovers that person has physical custody or claims custody or visitation rights with respect to any minor child of the marriage . . . .’ (Cal. Rules of Court, rule 5.24(e)(1)(A).) Under the heading ‘Permissive joinder,’ rule 5.24(e)(2) (italics omitted) provides that a court may order that a person be joined as a party ‘if the court finds that it would be appropriate to determine the particular issue in the proceeding and that the person be joined as a party is either indispensable for the court to make an order about that issue or is necessary to the enforcement of any judgment rendered on that issue.’ (*Id.*, rule 5.24(e)(2).) ‘In deciding whether it is appropriate to determine the particular issue in the proceeding, the court must consider its

effect upon the proceeding, including: [¶] (A) Whether resolving that issue will unduly delay the disposition of the proceeding; [¶] (B) Whether other parties would need to be joined to make an effective judgment between the parties; [¶] (C) Whether resolving that issue will confuse other issues in the proceeding; and [¶] (D) Whether the joinder of a party to determine the particular issue will complicate, delay, or otherwise interfere with the effective disposition of the proceeding.’ (*Ibid.*)” (*Bianka, supra*, 5 Cal.5th at pp. 1017-1018.)

“Because the determination of whether a person or entity must be joined as a party to a civil action is a case-specific inquiry that “weighs ‘factors of practical realities and other considerations,’” a trial court’s ruling on joinder is reviewed for abuse of discretion. [Citation.]” (*Bianka, supra*, 5 Cal.5th at pp. 1017-1018.)

### III. Analysis

Because Wife moved to join third parties to an unspecified “proceeding,” we asked for additional briefing to clarify the nature of the underlying action, i.e., did she wish to join third parties to the dissolution action, a JDE, or a different type of enforcement action.

Wife responded that she was not seeking joinder of the Third Party Claimants to the dissolution action. That dispute was completely resolved upon entry of the final dissolution judgment in 2003.

Rather, Wife claimed her motions for joinder related specifically to the order for the JDE, which “served to enforce the money judgment portion of the . . . dissolution.” (Capitalization and bold omitted.) She reasoned an ORAP lien was created by service of the JDE order and the joinder motions “relate to the enforcement of the ORAP lien.” Wife asserts sections 708.110 and 708.120 create liens before JDEs, “but additional enforcement measures (such as joinder of the third parties) are required to execute on the respective liens.” She cited no legal authority to support her theory that joinder is required to enforce ORAP liens against third parties.

Wife asserted she had two choices after determining Husband's property was in the possession and control of a third party, and she was not limited to which one to apply. Wife explains one option was to pursue a JDE of Husband and enforce "the lien thereby created on the property by separate executions." (Citing *Burns, supra*, 291 B.R. at p. 844.) The second option was to encumber the property by directly serving the third party.

Wife maintains she chose the first option and served Husband with an order scheduling his JDE and concurrently creating an ORAP lien. She asserts the trial court must join the third parties to gain jurisdiction over them and enforce her ORAP lien. She reaches the following conclusion: "Joinder is the necessary procedural step to enforce [her] ORAP lien and the underlying judgment. Absent joinder, [Wife] will be left with an ORAP lien, but without any means to enforce the lien and to execute on any property over which she has priority."

Wife misunderstands the purpose of the section 708.110 ORAP lien. This lien is automatically created by service of the order and serves as a mechanism to establish a start date for Wife's priority over Husband's assets while waiting for the JDE to take place. The lien does not attach to any specific property. The lien is created in *anticipation of the court's identification of specific assets* at the JDE, and then subsequent orders/liens to help the judgment creditor capture those assets. The ORAP lien is a collateral tool to the JDE, helping the judgment creditor assert priority over other unsecured creditors when the time comes to enforce the post-JDE court rulings. In other words, the judgment creditor's remedy to reach any assets covered during the duration of the ORAP lien requires proof the trial court *identified nonexempt assets* during the JDE and ruled those specific assets could be used to satisfy the money judgment.

Here, it is unclear if Husband's JDE took place, and what, if any, orders the trial court made regarding assets covered by Wife's ORAP lien. As mentioned earlier, the court had authority to utilize several different judgment enforcement remedies after

examining Husband in the JDE. They include turnover orders, forcing Husband to deliver funds or property to a levying officer (because a writ of execution was issued prior to the JDE) or directly to the judgment creditor. (Ahart, *supra*, at ¶ 6:1341, p. 6G-24.) Additionally, the court could have appointed a receiver under section 708.620 and “order[ed] the judgment debtor to make any necessary assignments or deliveries to the receiver for the purpose of sale or collection. [Citations.]” (Ahart, *supra*, at ¶ 6:1344, p. 6G-25.) Turnover orders are enforceable by contempt and the order creates a lien on the property or debt described in the order. (§ 708.205, subd. (a).) This lien continues after the property is transferred or encumbered and can be enforced unless the third party is a person listed in section 697.740 (person who acquires interest to equivalent value, a buyer in ordinary course of business). However, our record contains no information about what transpired during or after the JDE. We will not speculate if the court identified money Husband used to pay the Third Party Claimants, or if it fashioned any enforceable orders regarding Husband’s money/assets to satisfy the money judgment.

Wife’s reliance on *Burns* is misplaced. It did not hold that a creditor can directly enforce an ORAP lien against third parties via a joinder motion. The bankruptcy court in *Burns* merely recognized pre-JDE liens, created under sections 709.110 and 708.120, both establish a creditor’s priority over the judgment debtor’s assets, including those possessed by third parties. (*Burns, supra*, 291 B.R. at pp. 853-854.) In that case, the judgment creditor created an ORAP lien against the debtor and also obtained a “turnover order in aid of execution” pursuant to section 699.040. (*Id.* at p. 848, capitalization omitted.) The debtor filed a chapter 13 bankruptcy case and the bankruptcy court learned debtor was entitled to settlement money arising from a different lawsuit. (*Ibid.*) The bankruptcy court ordered that the settlement money should be placed into a trust account held by her attorney, and this transfer took place while the ORAP lien was in place. Next, the debtor filed a chapter 7 bankruptcy petition and the settlement money was transferred to the trustee. (*Id.* at p. 849.) The trustee filed a complaint to determine

if the judgment creditor's lien covered the settlement money. The trustee argued only a third party ORAP lien would apply to settlement money possessed and controlled by third parties.

The bankruptcy appellate panel of the Ninth Circuit disagreed. (*Burns, supra*, 291 B.R. at pp. 853-854.) “Trustee’s interpretation would write into [section 708.110, subdivision (d),] ‘personal property of the judgment debtor *in the possession and control of the judgment debtor*.’ The omission of such language in [section 708.110, subdivision (d),] suggests that the California legislature did not intend that the property subject to the [section 708.110, subdivision (d),] lien need be solely within the judgment debtor’s custody and control. Surely, the California legislature did not intend for an abusive judgment debtor to have a safe haven by giving his property to a third party, or for a judgment creditor to have to play ‘pin the lien’ on shifting property. [Citation.]” (*Id.* at p. 853, italics added.) It affirmed the bankruptcy court’s holding that a section 708.120 third party ORAP lien was *not the exclusive* means of asserting priority over property held by third persons. (*Ibid.*)

The bankruptcy court in *Burns* also rejected the trustee’s argument section 708.120 should govern over section 708.110 because it was a more specifically worded statute. (*Burns, supra*, 291 B.R. at p. 854.) “The statutes are merely two consecutive sections in an integrated examination procedure. Thus, a judgment creditor has two distinct choices under these provisions when a judgment debtor’s property is in the possession and control of a third party. The creditor can pursue a [JDE], and then *enforce the lien thereby created on the property by separate execution*. Alternatively, the creditor can encumber the property by directly serving the third party, and then obtain turnover under [section] 708.205 (order for satisfaction of money judgment).” (*Ibid.*, italics added.)

Wife reads the italicized language as supporting her theory a creditor can separately enforce a section 708.110 ORAP lien. She misunderstands the case. The

bankruptcy court did not hold an ORAP lien, which does not attach to specific property, was the legal equivalent of an execution. The *Burns* court simply acknowledged a creditor may enforce a *lien created on the property* by separate execution procedures. (*Burns, supra*, 291 B.R. at pp. 854-855.) It rejected the creditor's argument that its turnover order in aid of execution created under section 699.040 was sufficient by itself to create an execution lien. (*Id.* at p. 854.) It explained the turnover order served only as "an *aid* to execution and levy" (*Burns, supra*, 291 B.R. at p. 854, italics added), and the creditor needed to comply with the procedure for obtaining a lien by levying a writ of execution. (§§ 697.010-697.710.) It distinguished the creditor's section 699.040 turnover order from a post-JDE turnover order created pursuant to section 708.205. The court recognized a section 708.205 turnover order created an execution lien without the need to follow additional procedures. Thus, contrary to Wife's reading of the case, the *Burns* court determined a 708.205 ORAP *turnover* lien, not a section 708.110 ORAP lien, created an execution lien.

In the case before us, Wife has a section 708.110 ORAP lien but there is no evidence of a turnover execution lien (§ 708.205), or any other execution order currently pending before the court. There is nothing to suggest the court identified specific assets safeguarded by the ORAP lien (which is not a separately enforceable lien). Wife must initiate judgment enforcement proceedings outlined in the EJM if she wishes to capture Husband's assets held by third parties.

On a final note, joinder procedures contemplate that the trial court will forcibly add a party to a pending action or claim, because the third party is deemed necessary to determine a particular issue in the proceeding. We have mentioned there are several procedures available for Wife to reach the judgment debtor's assets possessed by third parties, and unlike joinder motions, all of the EJM procedures incorporate due process protections to third parties. Wife merely suspects Husband paid the Third Party Claimants money subject to the section 708.110 ORAP lien, and the Third Party

Claimants were not bona fide recipients. Wife will require much more information, and need to follow procedures affording due process, if she wishes to pursue judgment enforcement proceedings in the future against these Third Party Claimants.

#### DISPOSITION

The orders are affirmed. In the interest of justice, each party shall bear his or her own costs on appeal.

O'LEARY, P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.